

This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 06-0790 C

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

NEW VENTURES ASSOCIATES, LLC,

Defendant.

PRELIMINARY INJUNCTION

This matter came before the Court for hearing on the joint motion of the plaintiff Commonwealth of Massachusetts, by and through the Attorney General on behalf of the Massachusetts Department of Environmental Protection (the “Department”) and defendant New Ventures Associates, LLC (“New Ventures”) for an order entering a preliminary injunction pursuant to Mass. R. Civ. P. 65; and

WHEREUPON it appearing to the Court that the requested relief serves the public interest in assuring compliance with the Commonwealth’s solid waste and air pollution laws and regulations,

IT IS ORDERED:

1. That, New Ventures, along with any agents, contractors, servants, employees, and

all persons in active concert or participation with New Ventures shall:

- a. within five (5) days of this Order, provide the Department with a true and complete copy of an executed contract with Highland Power, Inc. and schedule of deliverables for the purchase and installation of a fully automated enclosed flare system, including a 10 foot high stack extension, for use at the Crow Lane landfill (the "Facility") located at Crow Lane in Newburyport, Massachusetts (the "Site") as a landfill gas ("LFG") air pollution control device;
- b. within ninety (90) days of this Order, completely install and begin operating the enclosed flare in place of the existing open flare in-use on the Site as of the date of this Order, and thereafter operate the enclosed flare with demonstrated effectiveness in accordance with the performance standards in the LFG protocol attached to this Order as "Appendix A," including the "enclosed flare specifications and operations" in "Addendum 1" to Appendix A. Pending complete installation and full operation of the enclosed flare with demonstrated effectiveness, New Ventures shall continue to operate at all times the open flare in-place and in-use as of the date of this Order;
- c. within ten (10) days of this Order, submit to the Department a true and complete copy of an executed contract with a schedule of deliverables for the purchase and installation at the Site of a permanent LFG pretreatment system capable of operating twenty four (24) hours a day, seven (7) days a week in accordance with the performance standards in Appendix A, consisting of at least three (3) pretreatment vessels to be used to house either Sulfa Treat, Sulfa-Bind or other sulfide pretreatment media approved by the Department;

- d. within one hundred ten (110) days of this Order, completely install and begin operating the permanent LFG pretreatment system in accordance with the performance standards in Appendix A. New Ventures shall operate the permanent LFG pretreatment system in conjunction with the automated enclosed flare twenty four (24) hours a day, seven (7) days a week, with demonstrated effectiveness at controlling hydrogen sulfide, sulfur dioxide, and other LFG emissions to meet the requirements of G.L. c. 111, § 150A, and the implementing regulations at 310 C.M.R. 19.000 *et seq.*, and G.L. c. 111, § 142 A-B, and the implementing regulations at 310 C.M.R. 7.00 *et seq.*, until the Department determines, in writing, that LFG pretreatment is no longer necessary or required as air pollution control and nuisance prevention at the Site;
- e. beginning immediately, operate the temporary LFG pretreatment vessel in-place and in-use at the Site as of the date of this Order with Sulfa-Bind or other pretreatment media approved by the Department in accordance with the performance standards and requirements in Appendix A, excluding the requirements for twenty four (24) hours a day LFG pretreatment. Pending twenty four (24) hour a day operation of the temporary LFG pretreatment system required by paragraph 1 (h) of this Order, New Ventures shall operate the temporary LFG pretreatment system for approximately ten (10) hours a day, seven (7) days a week, beginning at 8:00 pm and continuing until 6:00 am or until the Sulfa-Bind media must be regenerated or the Sulfa Treat media must be replaced, after which point New Ventures shall continue to operate the temporary LFG pretreatment system twenty four (24) hours a day, seven (7) days a

week with new or regenerated media in accordance with the requirements of this paragraph 1 (e);

- f. within five (5) days of this Order, submit certification to the Department that New Ventures has ownership or control of vessels to be approved in writing with reasonable promptness by the Department for use with either Sulfa-Bind, Sulfa Treat or other suitable, Department approved pretreatment media until a permanent LFG pretreatment system is installed and operating with demonstrated effectiveness in accordance with the requirements of paragraph 1 (d) of this Order and the performance standards in Appendix A. In the event that the lease or other arrangement New Ventures has in-place with ADI International, Inc. ("ADI") as of the date of this Order to use a temporary LFG pretreatment vessel in conjunction with Sulfa-Bind pretreatment media is revoked or not renewed by ADI prior to the commencement of twenty four (24) hour a day, seven (7) day a week pretreatment required by paragraph 1 (h) of this Order, New Ventures shall immediately place \$10,000 into a Department approved escrow account dedicated for the lease or purchase of a pretreatment vessel to be used with Department approved pretreatment media to fulfill the requirements of paragraphs 1 (e) and 1 (h) of this Order. As soon thereafter as reasonably practicable, New Ventures shall purchase, lease, or otherwise acquire and install a Department approved pretreatment vessel to be used with Sulfa Treat or other media approved by the Department to meet the requirements of paragraph 1 (e) and 1 (h) of this Order. No C&D Material shall be accepted at the Site until a temporary LFG pretreatment system meeting the requirements of paragraph 1 (e) or 1 (h) is in place and operating in accordance with the performance standards in Appendix A, subject to the conditions and

requirements of paragraphs 2, through 7, inclusive, of this Order;

- g. within ten (10) days of this Order, submit to the Department a true and complete copy of a paid receipt, executed contract for purchase, or other proof of purchase of Sulfa-Bind, Sulfa Treat, or other suitable Department approved pretreatment media in a quantity sufficient to operate the temporary pretreatment vessel in-place and in-use at the Site as of the date of this Order or other pretreatment vessel approved by the Department in accordance with the requirements of paragraph 1 (e) of this Order and the performance standards in Appendix A, excluding the performance standards for twenty four (24) hour a day LFG pretreatment operation;
- h. as soon as reasonably practicable, and in no event more than forty five (45) days after the date of this Order, begin operating the temporary LFG pretreatment system using two or more pretreatment vessels on a twenty four (24) hour a day, seven (7) day a week basis in conjunction with the fully automated enclosed flare required by paragraph 1 (b), or, in the event that the fully automated enclosed flare has not yet been installed, in conjunction with the open flare in-place and in-use at the Site as of the date of this Order. This temporary LFG pretreatment system shall meet the performance requirements set forth in Appendix A and operate with demonstrated effectiveness at controlling hydrogen sulfide, sulfur dioxide, and other LFG emissions to meet the requirements of G.L. c. 111, § 150A, and the implementing regulations at 310 C.M.R. 19.000 *et seq.*, including, without limitation, sections 19.043, 19.117, and 19.130, and G.L. c. 111, § 142 A-B, and the implementing regulations at 310 C.M.R. 7.00 *et seq.*, including, without limitation, sections 7.01 and 7.09. New Ventures shall continue to operate the temporary LFG pretreatment system with

demonstrated effectiveness in conjunction with the automated enclosed flare twenty four (24) hours a day, seven (7) days a week until the permanent LFG pretreatment system is operating with demonstrated effectiveness in accordance with the requirements of paragraph 1 (d) of this Order;

- i. properly dispose of all spent pretreatment media used at the site, including, without limitation, the proper disposal of all Sulfa Treat on-Site and proper disposal of all Sulfa-Bind pretreatment media off-Site unless it is demonstrated that on-Site disposal of Sulfa-Bind is acceptable and approved by the Department;
- j. within ten (10) days of this Order, completely cover with impervious tarps in accordance with the performance standards and “tarp and poly sheet placement protocol,” attached to this Order as “Appendix B,” all areas of the Site containing construction and demolition waste fines and residual materials (“C&D Material”) that are not currently tarped, with the exception of areas that in the past twenty four (24) hours have undergone filling, grading, shaping, or Geocomposite gas collection system installation activity, which areas shall be completely covered at all times when no work on that area is in progress, using removable, impervious tarps or poly sheeting at least 11 millimeters thick. New Ventures shall examine the areas currently tarped and repair or replace tarps or portions of tarps that are damaged or which do not provide an impervious barrier.
- k. within five (5) days of this Order, deposit \$200,000 into a Department approved escrow account with \$120,000 dedicated for use in paying for the requirements of paragraph 1 (a) and 1 (b), and \$80,000 dedicated for

paying for the requirements of 1 (e) and 1 (h);

- l. within seven (7) days of entry of this Order, staff the landfill with no fewer than three trained employees and have at least one trained employee on-Site and on-duty at all times so that the landfill is staffed twenty four (24) hours a day, seven days a week with trained employees certified in accordance with the requirements of Appendix A as capable of performing the following activities, which shall be performed on a routine or as needed basis twenty four (24) hours a day, seven (7) days a week in accordance with the performance standards in Sections F, H, and I of Appendix A: monitoring and maintaining operation of the existing open flare or the enclosed flare and LFG pretreatment system, responding to odor complaints, taking routine Jerome meter readings of hydrogen sulfide levels around the landfill's perimeter, and the other duties and monitoring responsibilities set forth in Sections F, H and I of Appendix A;
- m. within ten (10) days of this Order, submit for the Department's approval a complete and final plan for the sequenced closure and capping of the landfill (the "Landfill Capping Plan") prepared by SITEC Environmental, Inc. ("SITEC") that includes a quality assurance and quality control plan for the installation of the cover and capping system, including, without limitation, surface preparation, construction of gas vent trenches, and installation of piping, Geocomposite, and the flexible membrane liner ("FML"). The schedule shall provide that the construction of the final landfill cap and the installation of all required systems including, without limitation, the landfill gas control system and storm water control system shall be fully completed by August 30, 2007, with the seeding of the completed vegetative support layer completed by September 15, 2007.

The Department will, with reasonable promptness, notify New Ventures of any deficiencies in the plan and New Ventures shall within seven (7) days of receipt of such notice submit for the Department's approval an amended plan for the sequenced capping and closure of the landfill addressing all deficiencies and other concerns raised by the Department. New Ventures shall within seven (7) days of receipt of the Department's approval of the plan submit to the Department a true and complete copy of an executed contract with Cornerstone Environmental Group, LLC ("Cornerstone") or SITEC for the monitoring and oversight of the implementation and completion of the sequenced capping and closure plan and process, including, without limitation, the monitoring, reporting and other activities set forth in the performance standards in Appendix A;

- n. complete construction of the final landfill cap and the installation of all required systems including, without limitation, the landfill gas control system and storm water control system by August 30, 2007, with the seeding of the completed vegetative support layer completed by September 15, 2007;
- o. by November 1, 2007, submit for the Department's approval, in accordance with 310 C.M.R. 4.00, a Landfill Closure Completion application (BWP SW 43) certifying that closure of the landfill is complete. The application shall include an "as built" plan and a report prepared by the Massachusetts Registered Professional Engineer of record for the project that includes all the applicable Quality Control/Quality Assurance (QC/QA) data for the construction of the closure and the certifications required by 310 C.M.R. 19.011. The report shall identify and document any variations from the approved design. The QC/QA data for the project shall include

documentation, by direct measurement, of the thickness of each soil layer of the cap, demonstrating that each layer has been placed in conformance with the approved design.

- p. within sixty (60) days of this Order, submit for the Department's approval the geotechnical evaluation of the perimeter berm in accordance with the requirements of the Department's March 31, 2006 letter to New Ventures, attached to this Order as "Exhibit 1." The Department will, with reasonable promptness, notify New Ventures of any deficiencies in the evaluation, and New Ventures shall within 7 days of receipt of such notice submit for the Department's approval a response that addresses the deficiencies and any other concerns raised by the Department;
- q. within five (5) days of this Order, submit to the Department (i) a true and complete copy of an executed contract for the installation of the FML and the Geocomposite gas collection system with a schedule of deliverables by an FML subcontractor, (ii) the Draft "Gas Collection System – Site Plan" prepared by the Cornerstone Environmental Group LLC and dated October 5, 2006, and attached to this Order as "Exhibit 2," along with a final plan (the "Phase I and II Gas Vent Design Plan") stamped by a Massachusetts Registered Professional Engineer in accordance with 310 CMR 19.011 with Sheet 2 of Exhibit 2 ("Gas Detail") modified to reflect the design detail for retaining the leachate tanks at the northeast and northwest corners of the landfill, (iii) a QC/QA plan for the construction of the Geocomposite gas vent layer and FML in the areas designated as "Phase I" and "Phase II" on Exhibit 2, and (iv) a copy of an executed contract with Cornerstone Environmental Group, LLC ("Cornerstone") or SITEC for the monitoring and oversight of the implementation and

completion of the Phase I and Phase II Gas Vent Design Plan, including, without limitation, the monitoring, reporting and other activities set forth in the performance standards in Appendix A;

- r. (i) within forty five (45) days of this Order, start installing the FML cap and the Geocomposite gas collection system in the area designated as Phase I on Exhibit 2, and (ii) within seventy five (75) days of this Order, complete installation of the FML and the Geocomposite gas collection system for the entire Phase I and Phase II areas designated on Exhibit 2. These activities shall be performed in accordance with the Phase I and II Gas Vent Design Plan. Thereafter, New Ventures shall (iii) expand the Geocomposite gas collection system, install gas collection wells and complete the installation of FML for areas designated as “Area IA,” “Area IIA,” and “Phase III” on Exhibit 2 in accordance with the sequenced closure plan required in paragraph 1 (m) of this Order;
- s. within thirty (30) days of this Order, install gas collection well EW-11 and EW-12 in accordance with Exhibit 2 and the Phase I and II Gas Vent Design Plan. Immediately thereafter, New Ventures shall connect these two new wells to the gas collection system in accordance with the Phase I and II Gas Vent Design Plan so that gas recovery is conducted and maintained and the gas is delivered to and treated by the existing open flare or enclosed flare and the temporary pretreatment system or permanent LFG pretreatment system in accordance with the requirements of paragraphs 1 (b), 1 (d), 1 (e), and 1 (h) of this Order;
- t. within fifteen (15) days of this Order, begin the construction of the gas vent trenches and installation of the vent piping for the Geocomposite gas

collection system layer in the Phase I area in accordance with the Phase I and II Gas Vent and Design Plan;

- u. immediately institute measures to control and manage leachate contaminated standing surface water in the temporary and partially constructed on-Site basins and the wetlands. Pending completion of the landfill cap, these measures may include the on-Site treatment and recirculation of leachate contaminated surface water from the basins and the adjoining wetlands within the temporary basins provided there is no direct discharge of the treated leachate contaminated surface water from the basins to the wetlands or surface water bodies in the area of the landfill and that the treatment of the leachate contaminated water does not result in nuisance odors as determined by measurements of the ambient air in the area of basins with a Jerome Meter. In the event the discharge of contaminated leachate surface water occurs from the basins or the leachate contaminated surface water results in significant odors as determined by measurements of the ambient air in the area of the basins by a Jerome Meter New Ventures shall remove and appropriately dispose of the contaminated leachate surface water and institute such other measures as are necessary to control the air emissions from the leachate contaminated surface water and the release of leachate contaminated surface water from the basins;
- v. within ten (10) days of this Order, New Ventures shall implement measures to control the generation and release of leachate (i) in the southwest corner of the landfill at the base of the berm and (ii) along the road identified as the "landfill access road" on Exhibit 2. These measures shall include, without limitation the placement of tarps in accordance with

paragraph 1 (j) above and the evaluation of the leachate collection systems at the landfill access road and in the southwest corner of the landfill in the area of the existing leachate tank located approximately 225 feet Southwest of gas collection well EW-11, and the repair and modification of these systems as necessary to mitigate the release of contaminated leachate. Thereafter, New Ventures shall maintain, improve and expand the leachate control system as necessary to assure effective leachate control in compliance with the applicable requirements of 310 C.M.R. 19.000 *et seq.* and the terms and requirements of the Administrative Consent Order with Penalty issued by the Department in April 2005 (the “2005 ACOP,” attached to this Order as “Exhibit 3”) with regard to leachate management and control. Within forty-five (45) of this Order, New Ventures shall submit to the Department for review and approval a plan to reduce and control the release of leachate and storm water from the landfill into surface water that includes the results of the evaluation of the leachate collection systems in the southwest corner of the landfill and details the measures New Ventures has implemented to control the continuing release of leachate to surface water and any repairs and/or modifications that are necessary to the leachate collection system

- w. in accordance with the revised corrective action design plan received by the Department from New Ventures’ consultant on March 17, 2006, Transmittal No. W046210, (i) by January 31, 2007 complete construction of “Basin 2” located in the Northeast corner of the landfill with the proposed rip rap apron or other energy dissipater approved by the Department, and (ii) by February 28, 2007, complete construction of the Basin 2 storm water controls. In addition, New Ventures shall, in conjunction with placing the FML in the area identified as Phase I on

Exhibit 2 in accordance with paragraph 1 (r)(i) and (ii) of this Order, construct the storm water swale along the northern berm from Basin 2 to the west directing surface water runoff from the Phase 1 area along the berm to Basin 2;

- x. within thirty (30) days of this Order, replace or repair the silt fences and replace or repair hay bales along the perimeter of the landfill, and remove all eroded material from the base of the berm at the wetland;
- y. within seven (7) days of this Order, submit for the Department's approval an employment or consultant contract with a person or firm suitable to the Department and New Ventures for the purpose of monitoring compliance with the "gypsum removal best management practices protocol ("BMPs"), attached to this Order as "Appendix C," for construction and demolition debris waste ("C&D Waste") processed by Wood Waste of Boston, Inc., in Everett ("Wood Waste" or the "Everett Facility"), or other acceptable facilities, for transport to the Site for use as landfill shaping and grading C&D Material in accordance with the terms, requirements and conditions of paragraphs 2, 3, 4, 5, and 6 of this Order. The employment or consultant contract shall provide that one or more qualified persons shall be present at the Everett Facility and monitoring compliance with the BMPs: (a) during all hours that Wood Waste is open and operating, Monday through Saturday, for a two month period beginning no later than 15 days from the date of this Order, and (b) for an additional four month period beginning immediately thereafter, at least twenty hours per week during hours when Wood Waste is open and operating. The Department or its contractor(s), may, without notice, conduct additional monitoring inspections at Wood Waste, other C&D Waste processing facilities

transporting C&D Materials to the Site, or at the Site at any time during New Ventures' or Wood Waste's normal operational hours for the purposes of further monitoring compliance with the BMPs;

- z. (i) within fourteen (14) days of entry of this Order, submit the Interim Comprehensive Site Report prepared by SITEC and conduct the second round of environmental sampling required by for the Comprehensive Site Assessment, (ii) thereafter complete the third and fourth rounds of environmental sampling at three (3) months intervals, and (iii) by July 9, 2007, submit to the Department for review and approval the final Comprehensive Site Assessment Report.

2. Subject to the terms, conditions, and requirements of paragraphs 2, 3, 4, 5, 6 and 7 of this Order, New Ventures may use C&D Material generated in accordance with the BMPs required by Appendix C for placement as final grading and shaping material at the landfill in accordance with the final landfill capping and closure plan prepared by SITEC and approved by the Department in accordance with the requirements of paragraph 1 (m) of this Order, provided that the C&D Material is thoroughly mixed with soil in a 1:1 ratio during placement. At all times when C&D Materials are being accepted at the Site for use as final grading and shaping material, New Ventures shall maintain a stockpile of at least 3,000 cubic yards of soil for use in mixing with C&D Material for placement as shaping and grading material, as required by Exhibit 2 to the 2005 ACOP (Exhibit 3 of this Order). No C&D Material shall be stockpiled at

the Site at any time or temporarily stored at the Site for more than eight (8) hours before being placed as grading or shaping material. Areas that within twenty four (24) hours have undergone filling, grading, shaping, or trench digging and pipe laying in preparation for installation of the Geocomposite gas collection system layer shall be completely covered at all times when no work on that area is in progress, using removable, impervious tarps or poly sheeting at least 11 millimeters thick in accordance with the performance requirements in Appendix B. A spray-on coating approved by the Department may be used as a temporary cover in these areas provided that the total area of spray-on coating does not exceed one-half (1/2) acre and that any area where a spray-on coating has been used shall be completely covered with tarps in accordance with the performance requirements in Appendix B within twenty four (24) hours of application of the spray-on coating.

3. Once the Department with reasonable promptness determines in writing that New Ventures has fully complied with all of the terms and conditions in paragraphs 1 (a) [contract for enclosed flare], 1 (c) [contract for and operation of final pretreatment system], 1 (e) [overnight pretreatment pending 24/7 pretreatment], 1 (f) [pretreatment vessels], 1 (g) [proof of purchase of Sulfa-Bind pretreatment media], 1 (i) [proper pretreatment media disposal], 1 (j) [tarp placement], 1 (k) [\$200K in escrow], 1 (l) [landfill staff], 1 (q) [FML contract], 1 (t) [Phase I gas collection system trench construction begun], and 1 (y) [BMP compliance monitoring contract] of this Order, New Ventures may begin accepting no more than 14 truckloads per day of C&D Materials at the Site for placement within the Phase I area as final grading and shaping

This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.

material from C&D Waste received and processed by Wood Waste after the date of this Order and subject to the BMPs required by Appendix C. Notwithstanding the 14 truckload limit of the previous sentence, once the Department has determined in writing that New Ventures has complied with the terms and conditions of this paragraph 3, New Ventures may begin accepting no more than a total of thirty-five (35) truckloads per day, inclusive of any truckloads accepted in accordance with the previous sentence, of fine and very fine C&D Material meeting the gypsum separation and other requirements in the protocol attached to this Order as "Appendix D," processed by Wood Waste within 8 weeks prior to the date of this Order, for the sole and limited purpose of placement, without being mixed with soil in a one-to-one (1:1) ratio, as a sub-base layer directly beneath the Geocomposite gas vent layer in the Phase I and Phase II areas, subject to the final grades depicted in the revised corrective action design plan, referenced in paragraph 1 (w) of this Order.

4. Once New Ventures has fully complied with each and every term, condition and requirement of paragraph 3 of this Order, and the Department has with reasonable promptness determined in writing that New Ventures has fully complied with the requirements of paragraphs 1 (m) [Department approval of final SITEC closure plan], 1 (r)(i) [start installation of Phase 1 FML/Geocomposite], 1 (s) [complete installation of two new gas wells], , and 1 (z)(i) [submission of the Interim Comprehensive Site Assessment and second round sampling] of this Order, New Ventures may begin the placement of C & D Materials in Area IA area in accordance with the terms of this Order.

5. Once New Ventures has fully complied with each and every term, condition and requirement in paragraph 3 and 4 of this Order, and the Department with reasonable promptness determines in writing that New Ventures has completed installation of FML in the entire Phase I area as referenced by paragraph 1 (r)(ii) and is in compliance with the requirements of paragraphs 1 (u) and 1 (v), [implementation of additional leachate control measures], and that the temporary LFG pretreatment system is operating twenty four (24) hours a day, seven (7) days a week with demonstrated effectiveness in accordance with the requirements of paragraph 1 (h) and the performance standards in Appendix A, New Ventures may increase the amount of C&D Material accepted at the Site for placement as final shaping and grading material from 14 truckloads per day to no more than 24 truckloads per day of C&D Material from C&D Waste received and processed by Wood Waste after the date of this Order and subject to the BMPs required by Appendix C. C & D Material meeting the gypsum separation and other requirements of Appendix D and processed by Wood Waste within 8 weeks prior to the date of this Order may be placed as final landfill grading and shaping material in accordance with the requirements of this paragraph 5.

6. Once New Ventures has fully complied with, and remains in compliance with, each and every term, condition, and requirement of paragraph 2, 3, 4, and 5 of this Order, and the Department with reasonable promptness determines in writing that New Ventures has fully complied with the requirements of paragraph 1 (r)(ii) [complete installation of the FML and Geocomposite Gas Vent Layer for the entire Phase I and Phase II areas] of this Order, and the permanent LFG pretreatment system has been installed and is operating with demonstrated

This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.

effectiveness over at least a 48 hour period, and is thereafter effectively operating twenty four (24) hours a day, seven (7) days a week as required by paragraph 1 (d) of this Order, New Ventures may increase the amount of C&D Material accepted at the Site for placement as final shaping and grading material at the landfill from 24 truckloads per day to no more than 35 truckloads per day of C&D Material from C&D Waste received and processed by Wood Waste after the date of this Order and subject to the BMPs required by Appendix C. C & D Material meeting the gypsum separation and other requirements of Appendix D and processed by Wood Waste within 8 weeks prior to the date of this Order may be placed as final landfill grading and shaping material in accordance with the requirements of this paragraph 6.

7. In the event that weather conditions prohibit further capping work before the FML capping has been completed for the entire Phase I and Phase II areas or any other area that reaches final grades in the Department approved final capping and closure plan required by paragraph 1 (m) of this Order, New Ventures shall complete installation of the Geocomposite gas collection system layer and associated piping for such areas and completely cover any uncapped portions of such area with impervious tarps in accordance with the requirements of paragraphs 1 (j) and 1 (m) of this Order and connect and operate the gas collection system for such areas to the active gas collection system for pretreatment and combustion by the enclosed flare, or, if the enclosed flare has not yet been installed, to the open flare in-place and on-Site as of the date of this Order, with connection to the enclosed flare once it has been installed in accordance with the requirements of paragraph 1 (b) of this Order. So long as the Department has with reasonable promptness determined, in writing, that New Ventures is in compliance with the requirements of

This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.

paragraphs 1 (a) through (m), inclusive, and 1 (p) through (q) inclusive, 1 (s), 1 (t), 1 (u), 1 (v), 1 (x), 1 (y), 1 (z)(i), and 2 of this Order, New Ventures, subject to the conditions and requirements of paragraph 8 of this Order, may continue to accept, temporarily store for no longer than eight (8) hours, and place in the areas designated as Area IIA and Phase III on Exhibit 2 in accordance with the final plan for the sequenced closure and capping of the landfill prepared by SITEC and approved by the Department, C&D Material for use as final shaping and grading material from either C&D Waste subject to the BMPs required by Appendix C and Appendix D.

8. In the event that it appears New Ventures may not meet any of the work completion deadlines in paragraphs 1 (r) [FML capping], 1 (t) [commencement of gas collection system layer construction], or 1 (n) [completion of final landfill cap] due to adverse weather conditions, New Ventures shall notify the Department as soon as it becomes aware that a weather delay is possible and, so long the anticipated delay is not the fault of New Ventures and its employees, agents, consultants, contractors and subcontractors, and New Ventures has taken all reasonable steps to avoid a weather delay, the Department, for good cause shown, may extend by no more than two (2) weeks the deadlines in paragraphs 1 (r), 1 (t) or 1 (n) on account of weather delay. Any extension for weather delay requested by New Ventures or agreed to by the Department under this paragraph 8 shall neither be considered a Force Majeure event or series of events, nor prohibit New Ventures from seeking a Force Majeure extension in accordance with the procedures and requirements of paragraphs 16 through 18, inclusive, of this Order due to extended adverse weather conditions.

9. In the event that the Department determines that New Ventures has failed to

This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.

remain in compliance with any of the terms, conditions or requirements of this Order, New Ventures, upon written notice (including notice by facsimile transmission or electronic mail) from the Department of this noncompliance shall immediately cease and thereafter desist from accepting or placing as grading or shaping material any C&D Material at the Site until the Department with reasonable promptness determines, in writing, that New Ventures has returned to full compliance with all terms, conditions and requirements of this Order. For the purposes of New Ventures' compliance with paragraphs 1 (a), 1 (b), 1 (d), 1 (e), and 1 (h) of this Order requiring that the existing open flare or enclosed flare, and the temporary LFG pretreatment system or permanent LFG pretreatment system, be operated in accordance with the performance standards set forth Appendix A, New Ventures shall not be allowed to resume acceptance and placement of C&D Material at the Site until the Department with reasonable promptness determines in writing that the existing open flare or enclosed flare, and the temporary LFG pretreatment system or permanent LFG pretreatment system have been operating with demonstrated effectiveness in accordance with the performance standards in Appendix A for at least 48 continuous hours. With the exception of ambient LFG emissions caused by or resulting from the Geocomposite gas collection system and FML installation work activities required by paragraphs 1 (r) and 1 (t) of this Order, or remedial measures to control and manage leachate and leachate contaminated surface water in compliance with or required by paragraphs 1 (u) and 1 (v) of this Order, any LFG emissions that create or result in Department verified nuisance odors will not be cause or provide a basis for ceasing acceptance and placement of C & D Fines and Materials pursuant to the requirements of this paragraph 9 so long as New Ventures promptly

This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.

corrects all violations of 310 CMR 19.043, 310 CMR 19.117, 310 CMR 19.130, 310 CMR 7.01 and 310 CMR 7.09 and New Ventures returns to full compliance with the air quality and nuisance requirements of 310 CMR 19.000 *et seq.* and 310 CMR 7.00 *et seq.* within 72 hours of written notice of any violation by the Department. Ambient LFG emissions caused by or resulting from the Geocomposite gas collection system and FML installation work and activities required by paragraphs 1 (r) and 1 (t) of this Order or the remedial measures to control and manage leachate and leachate contaminated surface water in compliance with or required by paragraphs 1 (u) and 1 (v) of this Order will not be cause or provide a basis for ceasing acceptance and placement of C & D Materials pursuant to the requirements of this paragraph 9 so long as New Ventures remains in compliance with the requirements of paragraphs 1 (r), 1 (t), 1 (u), and 1 (v).

10. The enclosed flare, once installed in accordance with the requirements of paragraph 1 (b) of this Order, and all piping, gas collection systems, propane tanks, and other components required to operate the enclosed flare, shall remain in-place and completely intact at the Site until such time as the Department determines, in writing, that the enclosed flare is no longer necessary or required by G.L. c. 111, § 150A, and the implementing regulations at 310 C.M.R. 19.000 *et seq.* and G.L. c. 111 §§142A-M and the implementing regulations at 310 C.M.R. 7.00 *et seq.* for air pollution control and nuisance prevention

11. The permanent LFG pretreatment system, once installed in accordance with the requirements of paragraph 1 (d) of this Order, including, without limitation, all vessels used to house the pretreatment media, and all pretreatment media in-use or at the Site, shall remain in-place and completely intact at the Site until the Department determines, in writing, that the

This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.

permanent LFG pretreatment system is no longer necessary or required by G.L. c. 111, § 150A, and the implementing regulations at 310 C.M.R. 19.000 *et seq.* and G.L. c. 111 §§142A-M and the implementing regulations at 310 C.M.R. 7.00 *et seq.* for air pollution control and nuisance prevention.

12. The Department and its contractors shall have the right to access the Site at any time and without notice to: respond to odor complaints; conduct inspections; take air quality readings, leachate samples, or other samples; secure the continued installation and full operation of the temporary LFG pretreatment system or permanent LFG pretreatment system in the event that either the temporary or permanent LFG pretreatment system has been removed, disabled, or otherwise fails, or if New Ventures has abandoned or stopped operating the LFG pretreatment system; secure the continued installation and full operation of the existing open flare or the enclosed flare, or, in the event that either the existing open flare or the enclosed flare has been removed or disabled or New Ventures has abandoned or stopped operating the existing open flare or the enclosed flare, secure installation and full operation of a replacement enclosed flare, as well as all piping, gas collection systems, propane tanks, and other components required to operate the existing open flare or enclosed flare; and otherwise inspect the Site or monitor activity to ensure compliance with all terms, conditions, and requirements of this Order, as well as with any other applicable administrative enforcement orders issued by the Department. The Department also retains all rights of access to the Site under applicable state and federal law.

13. In the event that the acceptance and placement of C&D Material as grading or

This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.

shaping material has been halted in accordance with the conditions and requirements of paragraph 9 of this Order, New Ventures shall: continue to operate the temporary LFG pretreatment system or the permanent LFG pretreatment system in conjunction with the fully automated enclosed flare, or, if the enclosed flare has not yet been installed, in conjunction with the existing open flare in compliance with the terms of this Order; continue to staff the landfill twenty four (24) hours a day, seven days a week in accordance with the requirements of paragraph 1 (l) of this Order; maintain the contracts for oversight and allow access to the Site by Cornerstone and SITEC to continue to monitor the landfill capping and closure process in accordance with the requirements of paragraph 1 (m) and Appendix A of this Order; comply with the requirements of paragraphs 1 (u) and 1 (v) of this Order; comply with the requirements of paragraph 1 (w) and 1 (x) of this Order; continue to pay for and allow access to the Site and to Wood Waste by the person monitoring the BMPs in accordance with the requirements of paragraph 1 (y) of this Order and Appendix C and D; and continue all other closure activities required by the final capping and closure plan required by paragraph 1 (m), through and (o), inclusive, of this Order and by the Department's administrative Orders and 310 C.M.R. 19.000.

14. Nothing in this Order shall limit or in any way prejudice the Commonwealth from seeking any and all other relief sought in the Complaint in this action including, without limitation, the Commonwealth's claims for civil penalties for violations of G.L. c. 111, § 150A, G.L. c. 111, §§ 142 A-O, and G.L. c. 111, §§ 122, 123.

15. Nothing in this Order shall prejudice the Commonwealth from seeking additional

This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.

or further preliminary injunctive relief under this action or by separate action involving the Site to protect the public health, safety or the environment.

16. The Department may extend the time for performance of any requirement of this Order for any event that may be a Force Majeure event. For the purposes of this Order, a Force Majeure event is defined as any event or series of cumulative events arising from causes beyond the control of New Ventures and are not caused by or the fault of New Ventures and its employees, agents, consultants, contractors, or subcontractors, that delays or prevents the timely performance of any requirement of this Order where such delay could not have been prevented, avoided, or minimized by the exercise of due care by New Ventures or its employees, agents, consultants, contractors or subcontractors. Normal inclement weather, financial hardship or inability, and unanticipated or increased cost or expenses associated with the performance of any requirement of this Order shall not be considered Force Majeure events. The stoppage of any work related to the capping and closure of the landfill as a result of any legal action taken by Newburyport residents or the City of Newburyport, or as a result of any order issued, bylaw or ordinance enacted, or resolution passed by the City of Newburyport, the Newburyport Board of Health, or any other board, department, agency, or division of the City of Newburyport, will be considered a Force Majeure event.

17. If any event occurs that delays or may delay performance of any requirement of this Order, whether or not caused by a Force Majeure event as defined by and set forth in paragraph 16 of this Order, New Ventures shall notify the Department within 72 hours after New

This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.

Ventures knew or should have known that such event or series of cumulative events may cause delay, and, within five (5) days thereafter, submit to the Department a written notice of the event describing in detail: (a) the reason for and the anticipated length of the delay; (b) the measures taken and to be taken by New Ventures to prevent, avoid, or minimize the delay, and (c) the proposed schedule for taking such measures. If New Ventures intends to assert that the delay or potential for delay is or will be caused by a Force Majeure event, such notice shall also include the rationale for attributing the delay or potential delay to a Force Majeure event and shall include all available documentation supporting the Force Majeure claim. Notwithstanding the foregoing notice requirements of this paragraph 17, New Ventures shall within 24 hours provide orally and within 72 hours provide written notice to the Department of any failure of the enclosed flare or temporary or permanent LFG pretreatment system to function with demonstrated effectiveness in accordance with the performance standards in Appendix A, or if any occurrence or event presents an imminent threat to public health or welfare or the environment. Failure to comply with the notice requirements of this paragraph shall constitute a waiver of any right or argument to request an extension based on the event.

18. If the Department determines that New Ventures' failure to perform a requirement of this Order is caused by a Force Majeure event, and New Ventures otherwise complies with the notice provisions set forth above, the Department may extend in writing the time for performance of such requirement for a period no longer than the time the failure to perform is caused by or attributable to the Force Majeure event. No extension shall be provided for any

This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.

period of time that New Ventures' failure to perform could have been prevented, avoided or minimized by the exercise of due care. The delay in performance of a requirement of this Order caused by a Force Majeure event shall not, of itself, extend the time for performance of any other requirement of this Order.

19. The parties reserve their rights to raise any defenses or further claims during the litigation of this action, including, without limitation, any defenses or claims raised by way of Answer, amended Complaint, motion or cross motion made by any party pursuant to Mass. R. Civ. P. 12, or Mass. R. Civ. P. 56.

20. This Order shall remain in full force and effect until terminated or superseded by Order of this Court, with the Commonwealth and New Ventures reserving their right to seek clarification, modification, amendment, or termination of this preliminary injunction through motion made pursuant to the requirements of Superior Court Rule 9A (a) through (e), inclusive, and the Massachusetts Rules of Civil Procedure.

21. Unless otherwise indicated in the Order, All notices and submissions required by this Order shall be made in writing by hand delivery, overnight mail, or certified mail, return receipt requested, to the addresses identified in the attached "Appendix E." All notices and submissions shall be deemed given or submitted upon receipt. The party sending the notice or submission shall be responsible for obtaining proof of delivery of receipt. In the event of a change in recipient or mailing address, all parties shall be notified within five (5) days after the effective date of any successor recipient or new mailing address.

This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.

22. All descriptive references to the subject matter of any paragraphs or subparagraphs of this Order enclosed by brackets, are included only for the convenience of the parties and the Court and have no legal significance.

23. For the purpose of this Order, including, without limitation, all requirements that must be complied with or completed within a specified number of days from the date of this Order, the date of this Order shall be October 20, 2006, the date the initial Order, without amendment, was entered

Justice, Superior Court

Date

Attest:

Assistant Clerk

Date